

**Representative Mike Schultz** proposes the following substitute bill:

**RETAIL FACILITY INCENTIVE PAYMENTS AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to incentive payments for retail facilities.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits a public entity from making, or entering into an agreement to make, certain incentive payments related to retail facilities after a specified date, with specified exceptions;
- ▶ requires municipalities and counties that made certain payments related to retail facilities during a fiscal year to submit a written report to the Governor's Office of Economic Opportunity (office);
- ▶ allows the office to notify the state auditor if a municipality or county fails to submit a report or fails to recoup misused funds within a certain time;
- ▶ allows the state auditor to initiate an audit or investigation if the state auditor receives notice from the office regarding a municipality or county; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None



**Other Special Clauses:**

None

**Utah Code Sections Affected:**

## AMENDS:

**10-8-2**, as last amended by Laws of Utah 2021, Chapters 84, 345, and 355**11-41-102**, as last amended by Laws of Utah 2021, Chapter 367**11-41-103**, as enacted by Laws of Utah 2004, Chapter 283**17-27a-102**, as last amended by Laws of Utah 2021, Chapter 432**17C-1-407**, as last amended by Laws of Utah 2019, Chapters 376 and 480**17C-1-409**, as last amended by Laws of Utah 2021, Chapter 214**63N-1a-301**, as renumbered and amended by Laws of Utah 2021, Chapter 282**67-3-1**, as last amended by Laws of Utah 2021, Chapters 84 and 155

## ENACTS:

**11-41-104**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **10-8-2** is amended to read:

**10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

(1) (a) ~~[A]~~ Subject to Section **11-41-103**, a municipal legislative body may:

(i) appropriate money for corporate purposes only;

(ii) provide for payment of debts and expenses of the corporation;

(iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and dispose of real and personal property for the benefit of the municipality, whether the property is within or without the municipality's corporate boundaries, if the action is in the public interest and complies with other law;

(iv) improve, protect, and do any other thing in relation to this property that an individual could do; and

(v) subject to Subsection (2) and after first holding a public hearing, authorize municipal services or other nonmonetary assistance to be provided to or waive fees required to be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

(b) A municipality may:

(i) furnish all necessary local public services within the municipality;

(ii) purchase, hire, construct, own, maintain and operate, or lease public utilities located and operating within and operated by the municipality; and

(iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property located inside or outside the corporate limits of the municipality and necessary for any of the purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78B, Chapter 6, Part 5, Eminent Domain, and general law for the protection of other communities.

(c) Each municipality that intends to acquire property by eminent domain under Subsection (1)(b) shall comply with the requirements of Section [78B-6-505](#).

(d) Subsection (1)(b) may not be construed to diminish any other authority a municipality may claim to have under the law to acquire by eminent domain property located inside or outside the municipality.

(2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to the provisions of Subsection (3).

(b) The total amount of services or other nonmonetary assistance provided or fees waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the municipality's budget for that fiscal year.

(3) It is considered a corporate purpose to appropriate money for any purpose that, in the judgment of the municipal legislative body, provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality subject to this Subsection (3).

(a) The net value received for any money appropriated shall be measured on a project-by-project basis over the life of the project.

(b) (i) A municipal legislative body shall establish the criteria for a determination under this Subsection (3).

(ii) A municipal legislative body's determination of value received is presumed valid unless a person can show that the determination was arbitrary, capricious, or illegal.

(c) The municipality may consider intangible benefits received by the municipality in determining net value received.

(d) (i) Before the municipal legislative body makes any decision to appropriate any

88 funds for a corporate purpose under this section, the municipal legislative body shall hold a  
89 public hearing.

90 (ii) At least 14 days before the date of the hearing, the municipal legislative body shall  
91 publish a notice of the hearing described in Subsection (3)(d)(i) by posting notice:

92 (A) in at least three conspicuous places within the municipality; and

93 (B) on the Utah Public Notice Website created in Section 63A-16-601.

94 (e) (i) Before a municipality provides notice as described in Subsection (3)(d)(ii), the  
95 municipality shall perform a study that analyzes and demonstrates the purpose for an  
96 appropriation described in this Subsection (3) in accordance with Subsection (3)(e)(iii).

97 (ii) A municipality shall make the study described in Subsection (3)(e)(i) available at  
98 the municipality for review by interested parties at least 14 days immediately before the public  
99 hearing described in Subsection (3)(d)(i).

100 (iii) A municipality shall consider the following factors when conducting the study  
101 described in Subsection (3)(e)(i):

102 (A) what identified benefit the municipality will receive in return for any money or  
103 resources appropriated;

104 (B) the municipality's purpose for the appropriation, including an analysis of the way  
105 the appropriation will be used to enhance the safety, health, prosperity, moral well-being,  
106 peace, order, comfort, or convenience of the inhabitants of the municipality; and

107 (C) whether the appropriation is necessary and appropriate to accomplish the  
108 reasonable goals and objectives of the municipality in the area of economic development, job  
109 creation, affordable housing, elimination of a development impediment, job preservation, the  
110 preservation of historic structures and property, and any other public purpose.

111 (f) (i) An appeal may be taken from a final decision of the municipal legislative body,  
112 to make an appropriation.

113 (ii) A person shall file an appeal as described in Subsection (3)(f)(i) with the district  
114 court within 30 days after the day on which the municipal legislative body makes a decision.

115 (iii) Any appeal shall be based on the record of the proceedings before the legislative  
116 body.

117 (iv) A decision of the municipal legislative body shall be presumed to be valid unless  
118 the appealing party shows that the decision was arbitrary, capricious, or illegal.

(g) The provisions of this Subsection (3) apply only to those appropriations made after May 6, 2002.

(h) This section applies only to appropriations not otherwise approved pursuant to Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

(4) (a) Before a municipality may dispose of a significant parcel of real property, the municipality shall:

(i) provide reasonable notice of the proposed disposition at least 14 days before the opportunity for public comment under Subsection (4)(a)(ii); and

(ii) allow an opportunity for public comment on the proposed disposition.

(b) Each municipality shall, by ordinance, define what constitutes:

(i) a significant parcel of real property for purposes of Subsection (4)(a); and

(ii) reasonable notice for purposes of Subsection (4)(a)(i).

(5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire real property for the purpose of expanding the municipality's infrastructure or other facilities used for providing services that the municipality offers or intends to offer shall provide written notice, as provided in this Subsection (5), of its intent to acquire the property if:

(i) the property is located:

(A) outside the boundaries of the municipality; and

(B) in a county of the first or second class; and

(ii) the intended use of the property is contrary to:

(A) the anticipated use of the property under the general plan of the county in whose unincorporated area or the municipality in whose boundaries the property is located; or

(B) the property's current zoning designation.

(b) Each notice under Subsection (5)(a) shall:

(i) indicate that the municipality intends to acquire real property;

(ii) identify the real property; and

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and

(B) each affected entity.

(c) A notice under this Subsection (5) is a protected record as provided in Subsection 63G-2-305(8).

(d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality previously provided notice under Section 10-9a-203 identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.

(ii) If a municipality is not required to comply with the notice requirement of Subsection (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide the notice specified in Subsection (5)(a) as soon as practicable after its acquisition of the real property.

Section 2. Section 11-41-102 is amended to read:

**CHAPTER 41. PROHIBITION ON RETAIL FACILITY INCENTIVE  
PAYMENTS ACT**

**11-41-102. Definitions.**

As used in this chapter:

(1) "Agreement" means an oral or written agreement between a[?] public entity and a person.

~~[(a) (i) county; or]~~

~~[(ii) municipality; and]~~

~~[(b) person.]~~

~~[(2) "Municipality" means a:]~~

~~[(a) city;]~~

~~[(b) town; or]~~

~~[(c) metro township.]~~

~~[(3) "Payment" includes:]~~

~~[(a) a payment;]~~

~~[(b) a rebate;]~~

~~[(c) a refund; or]~~

~~[(d) an amount similar to Subsections (3)(a) through (c).]~~

~~[(4) "Regional retail business" means a:]~~

~~[(a) retail business that occupies a floor area of more than 80,000 square feet;]~~

~~[(b) dealer as defined in Section 41-1a-102;]~~

181 ~~[(c) retail shopping facility that has at least two anchor tenants if the total number of~~  
182 ~~anchor tenants in the shopping facility occupy a total floor area of more than 150,000 square~~  
183 ~~feet; or]~~

184 ~~[(d) grocery store that occupies a floor area of more than 30,000 square feet.]~~

185 ~~[(5) (a) "Sales and use tax" means a tax:]~~

186 ~~[(i) imposed on transactions within a:]~~

187 ~~[(A) county; or]~~

188 ~~[(B) municipality; and]~~

189 ~~[(ii) except as provided in Subsection (5)(b), authorized under Title 59, Chapter 12,~~  
190 ~~Sales and Use Tax Act.]~~

191 ~~[(b) "Sales and use tax" does not include a tax authorized under:]~~

192 ~~[(i) Subsection 59-12-103(2)(a)(i);]~~

193 ~~[(ii) Subsection 59-12-103(2)(b)(i);]~~

194 ~~[(iii) Subsection 59-12-103(2)(c)(i);]~~

195 ~~[(iv) Subsection 59-12-103(2)(d);]~~

196 ~~[(v) Subsection 59-12-103(2)(c)(i)(A);]~~

197 ~~[(vi) Section 59-12-301;]~~

198 ~~[(vii) Section 59-12-352;]~~

199 ~~[(viii) Section 59-12-353;]~~

200 ~~[(ix) Section 59-12-603; or]~~

201 ~~[(x) Section 59-12-1201.]~~

202 ~~[(6) (a) "Sales and use tax incentive payment" means a payment of revenues:]~~

203 ~~[(i) to a person;]~~

204 ~~[(ii) by a:]~~

205 ~~[(A) county; or]~~

206 ~~[(B) municipality;]~~

207 ~~[(iii) to induce the person to locate or relocate a regional retail business within the:]~~

208 ~~[(A) county; or]~~

209 ~~[(B) municipality; and]~~

210 ~~[(iv) that are derived from a sales and use tax.]~~

211 ~~[(b) "Sales and use tax incentive payment" does not include funding for public~~

infrastructure.]

(2) "Business entity" means a sole proprietorship, partnership, limited partnership, limited liability company, corporation, or other entity or association used to carry on a business for profit.

(3) "Environmental mitigation" means an action or activity intended to remedy known negative impacts to the environment.

(4) "Mixed-use development" means development with mixed land uses, including housing.

(5) "Moderate income housing plan" means the moderate income housing plan element of a municipality's or county's general plan as adopted under Section [10-9a-403](#) or [17-27a-403](#).

(6) "Municipality" means a city, town, or metro township.

(7) "Office" means the Governor's Office of Economic Opportunity.

(8) "Political subdivision" means any county, municipality, school district, local district, special service district, community reinvestment agency, or entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act.

(9) "Public entity" means:

(a) a political subdivision;

(b) a state agency as defined in Section [63J-1-220](#);

(c) a higher education institution as defined in Section [53B-1-201](#);

(d) the Military Installation Development Authority created in Section [63H-1-201](#);

(e) the Utah Inland Port Authority created in Section [11-58-201](#); or

(f) the Point of the Mountain State Land Authority created in Section [11-59-201](#).

(10) "Public funds" means any money received by a public entity that is derived from:

(a) a sales and use tax authorized under Title 59, Chapter 12, Sales and Use Tax Act;

or

(b) a property tax levy.

(11) "Public infrastructure" means:

(a) a public facility as defined in Section [11-36a-102](#); or

(b) public infrastructure included as part of the master plan component of a municipality's or county's general plan under Section [10-9a-403](#) or [17-27a-403](#).

(12) "Retail facility" means any facility operated by a business entity for the primary



243 purpose of making retail transactions.

244 (13) (a) "Retail facility incentive payment" means a payment of public funds:

245 (i) to a person by a public entity;

246 (ii) for the development, construction, renovation, or operation of a retail facility

247 within an area of the state; and

248 (iii) in the form of:

249 (A) a payment;

250 (B) a rebate;

251 (C) a refund;

252 (D) a subsidy; or

253 (E) any other similar incentive, award, or offset.

254 (b) "Retail facility incentive payment" does not include a payment of public funds for:

255 (i) the development, construction, renovation, or operation of:

256 (A) public infrastructure; or

257 (B) a structured parking facility;

258 (ii) the demolition of an existing facility;

259 (iii) assistance under a state or local:

260 (A) main street program; or

261 (B) historic preservation program;

262 (iv) environmental mitigation or sanitation, if determined by a state or federal agency

263 under applicable state or federal law;

264 (v) assistance under a water conservation program or energy efficiency program, if any  
265 business entity located within the public entity's boundaries or subject to the public entity's  
266 jurisdiction is eligible to participate in the program;

267 (vi) emergency aid or assistance, if any business entity located within the public entity's  
268 boundaries or subject to the public entity's jurisdiction is eligible to receive the emergency aid  
269 or assistance; or

270 (vii) assistance under a public safety or security program, if any business entity located  
271 within the public entity's boundaries or subject to the public entity's jurisdiction is eligible to  
272 participate in the program.

273 (14) "Retail transaction" means any transaction subject to a sales and use tax under

274 Title 59, Chapter 12, Sales and Use Tax Act.

275 (15) (a) "Small business" means a business entity that:

276 (i) has fewer than 30 full-time equivalent employees; and

277 (ii) maintains the business entity's principal office in the state.

278 (b) "Small business" does not include:

279 (i) a franchisee, as defined in 16 C.F.R. Sec. 436.1;

280 (ii) a dealer, as defined in Section [41-1a-102](#); or

281 (iii) a subsidiary or affiliate of another business entity that is not a small business.

282 Section 3. Section **11-41-103** is amended to read:

283 **11-41-103. Prohibition on retail facility incentive payments -- Exceptions.**

284 ~~[A county or municipality may not:]~~

285 (1) Except as provided in Subsection (2), a public entity may not:

286 ~~[(1)]~~ (a) make a ~~[sales and use tax]~~ retail facility incentive payment under an agreement  
287 that is initiated or entered into on or after July 1, ~~[2004]~~ 2022; or

288 ~~[(2)]~~ (b) initiate or enter into an agreement on or after July 1, ~~[2004]~~ 2022, to make a  
289 ~~[sales and use tax]~~ retail facility incentive payment.

290 (2) Notwithstanding Subsection (1) and subject to Subsection (3), a public entity may  
291 make a retail facility incentive payment for:

292 (a) a retail facility located entirely within a census tract in which more than 51% of  
293 residents have a household income at or below 70% of the county area median income;

294 (b) a retail facility included as part of a mixed-use development in which:

295 (i) the development includes at least one housing unit for every 1,250 square feet of  
296 retail space within the development; and

297 (ii) at least 10% of the new or proposed housing units within the development qualify  
298 as moderate income housing, in accordance with the moderate income housing plan of the  
299 municipality or county in which the development is located;

300 (c) a retail facility located within a county of the fourth, fifth, or sixth class;

301 (d) a retail facility for a small business;

302 (e) a retail facility for a Utah-based nonprofit arts or cultural organization; or

303 (f) a retail facility included as part of a development in which:

304 (i) the retail facility has a gross sales floor area of no more than 20,000 square feet; and

(ii) no other retail facility is located within the same development.

(3) (a) A person who receives public funds for a mixed-use development in accordance with Subsection (2)(b) may not use the public funds for the development, construction, renovation, or operation of housing units within the mixed-use development unless the housing units qualify as moderate income housing in accordance with the moderate income housing plan of the municipality or county in which the development is located.

(b) For each fiscal year that a municipality or county makes a retail facility incentive payment under Subsection (2), the municipality or county shall submit a report to the office in accordance with Section [11-41-104](#).

Section 4. Section **11-41-104** is enacted to read:

**11-41-104. Reporting requirements -- Notice to state auditor.**

(1) For a fiscal year beginning on or after July 1, 2022, a municipality or county that makes a retail facility incentive payment described in Subsection [11-41-103](#)(2) shall submit a written report to the office on or before June 30 of the fiscal year in which the retail facility incentive payment is made.

(2) The report under Subsection (1) shall:

(a) provide a description of each retail facility incentive payment made by the municipality or county during the fiscal year, including:

(i) the type of retail facility incentive payment made under Subsection [11-41-103](#)(2);

(ii) the date on which the retail facility incentive payment was made; and

(iii) the recipient of the retail facility incentive payment;

(b) include any other information requested by the office; and

(c) be in a form prescribed by the office.

(3) Upon the receipt of a report under Subsection (1), the office shall review the report to determine whether each retail facility incentive payment described in the report is in compliance with Section [11-41-103](#).

(4) (a) The office shall send notice to a municipality or county if the office, after reviewing the municipality's or county's report, determines that the municipality or county made a retail facility incentive payment that violates Section [11-41-103](#).

(b) The notice described in Subsection (4)(a) shall include:

(i) a description of each retail facility incentive payment that the office determines has

violated Section [11-41-103](#), including the grounds for making the determination;

(ii) a statement that the municipality or county has 90 days from the day on which the notice is sent to:

(A) recover or recoup the amount of misused public funds; and

(B) submit information to the office showing that the municipality or county recovered or recouped the amount of misused public funds; and

(iii) a statement that the office may notify the state auditor as provided in Subsection (5) if the municipality or county fails to comply with Subsection (4)(b)(ii).

(5) (a) The office may send notice to the state auditor if the office determines that:

(i) a municipality or county failed to comply with Subsection (4)(b)(ii); or

(ii) a municipality or county failed to submit a report in accordance with this section.

(b) The notice described in Subsection (5)(a) shall include:

(i) a description of the office's grounds for sending notice under Subsection (5)(a);

(ii) a copy of the report submitted to the office under Subsection (1), if applicable; and

(iii) any other information required by the state auditor for purposes of initiating an audit or investigation in accordance with Section [67-3-1](#).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules to implement this section.

Section 5. Section **17-27a-102** is amended to read:

**17-27a-102. Purposes -- General land use authority -- Limitations.**

(1) (a) The purposes of this chapter are to:

(i) provide for the health, safety, and welfare;

(ii) promote the prosperity;

(iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of each county and each county's present and future inhabitants and businesses;

(iv) protect the tax base;

(v) secure economy in governmental expenditures;

(vi) foster the state's agricultural and other industries;

(vii) protect both urban and nonurban development;

(viii) protect and ensure access to sunlight for solar energy devices;

(ix) provide fundamental fairness in land use regulation;

- 367 (x) facilitate orderly growth and allow growth in a variety of housing types; and  
368 (xi) protect property values.

369 (b) [~~Except as provided in~~] Subject to Subsection (4) and Section [11-41-103](#), to  
370 accomplish the purposes of this chapter, a county may enact all ordinances, resolutions, and  
371 rules and may enter into other forms of land use controls and development agreements that the  
372 county considers necessary or appropriate for the use and development of land within the  
373 unincorporated area of the county or a designated mountainous planning district, including  
374 ordinances, resolutions, rules, restrictive covenants, easements, and development agreements  
375 governing:

- 376 (i) uses;  
377 (ii) density;  
378 (iii) open spaces;  
379 (iv) structures;  
380 (v) buildings;  
381 (vi) energy-efficiency;  
382 (vii) light and air;  
383 (viii) air quality;  
384 (ix) transportation and public or alternative transportation;  
385 (x) infrastructure;  
386 (xi) street and building orientation and width requirements;  
387 (xii) public facilities;  
388 (xiii) fundamental fairness in land use regulation; and  
389 (xiv) considerations of surrounding land uses to balance the foregoing purposes with a

390 landowner's private property interests and associated statutory and constitutional protections.

391 (2) Each county shall comply with the mandatory provisions of this part before any  
392 agreement or contract to provide goods, services, or municipal-type services to any storage  
393 facility or transfer facility for high-level nuclear waste, or greater than class C radioactive  
394 waste, may be executed or implemented.

395 (3) (a) Any ordinance, resolution, or rule enacted by a county pursuant to its authority  
396 under this chapter shall comply with the state's exclusive jurisdiction to regulate oil and gas  
397 activity, as described in Section [40-6-2.5](#).

(b) A county may enact an ordinance, resolution, or rule that regulates surface activity incident to an oil and gas activity if the county demonstrates that the regulation:

- (i) is necessary for the purposes of this chapter;
- (ii) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and
- (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas activity, as described in Section 40-6-2.5.

(4) (a) This Subsection (4) applies to development agreements entered into on or after May 5, 2021.

(b) A provision in a county development agreement is unenforceable if the provision requires an individual or an entity, as a condition for issuing building permits or otherwise regulating development activities within an unincorporated area of the county, to initiate a process for a municipality to annex the unincorporated area in accordance with Title 10, Chapter 2, Part 4, Annexation.

(c) Subsection (4)(b) does not affect or impair the enforceability of any other provision in the development agreement.

Section 6. Section 17C-1-407 is amended to read:

**17C-1-407. Limitations on tax increment.**

(1) (a) If the development of retail sales of goods is the primary objective of an urban renewal project area, tax increment from the urban renewal project area may not be paid to or used by an agency unless the agency makes a development impediment determination under Chapter 2, Part 3, Development Impediment Determination in Urban Renewal Project Areas.

(b) ~~[Development]~~ Except as provided in Section 11-41-103, development of retail sales of goods does not disqualify an agency from receiving tax increment.

(c) After July 1, 2005, an agency may not receive or use tax increment generated from the value of property within an economic development project area that is attributable to the development of retail sales of goods, unless the tax increment was previously pledged to pay for bonds or other contractual obligations of the agency.

(2) (a) For the purpose of this Subsection (2):

(i) "Final tax rate" means the rate used to determine the amount of taxes a taxing entity levies as described in the notice to a taxpayer under Subsection 59-2-1317(2).

(ii) "Increased tax revenue" means tax revenue attributable to a tax rate increase.

(iii) "Tax rate increase" means the amount calculated by subtracting a taxing entity's certified rate, as defined in Section 59-2-924, from the taxing entity's final tax rate.

(b) Except as provided in Subsection (2)(c), for a year in which a taxing entity imposes a final tax rate higher than the certified tax rate, a county shall not pay an agency any portion of a taxing entity's increased tax revenue.

(c) Notwithstanding Subsection (2)(b), a county may pay all or a portion of a taxing entity's increased tax revenue to an agency if, at the time of the project area budget approval, the taxing entity committee or each taxing entity that is a party to an agreement under Section 17C-4-201 or 17C-5-204 consents to pay the agency the increased tax revenue.

(d) If the taxing entity committee or each tax entity that is a party to an agreement under Section 17C-4-201 or 17C-5-204 does not consent to payment of the increased tax revenue to the agency under Subsection (2)(c), the county shall distribute to the taxing entity the increased tax revenue in the same manner as other property tax revenue.

(e) Notwithstanding any other provision of this section, if, before tax year 2013, increased tax revenue is paid to an agency without the consent of the taxing entity committee or each taxing entity that is a party to an agreement under Section 17C-4-201 or 17C-5-204, and notwithstanding the law at the time that the tax revenue was collected or increased:

(i) the State Tax Commission, the county as the collector of the taxes, a taxing entity, or any other person or entity may not recover, directly or indirectly, the increased tax revenue from the agency by adjustment of a tax rate used to calculate tax increment or otherwise;

(ii) the county is not liable to a taxing entity or any other person or entity for the increased tax revenue that was paid to the agency; and

(iii) tax increment, including the increased tax revenue, shall continue to be paid to the agency subject to the same number of tax years, percentage of tax increment, and cumulative dollar amount of tax increment as approved in the project area budget and previously paid to the agency.

(f) An adjustment may not be made to incremental value under Section 59-2-924 for increased tax revenue not paid to an agency under this section.

(3) Except as the taxing entity committee otherwise agrees, an agency may not receive tax increment under an urban renewal or economic development project area budget adopted on or after March 30, 2009:

(a) that exceeds the percentage of tax increment or cumulative dollar amount of tax increment specified in the project area budget; or

(b) for more tax years than specified in the project area budget.

Section 7. Section **17C-1-409** is amended to read:

**17C-1-409. Allowable uses of agency funds.**

(1) (a) An agency may use agency funds:

(i) for any purpose authorized under this title;

(ii) for administrative, overhead, legal, or other operating expenses of the agency, including consultant fees and expenses under Subsection **17C-2-102**(1)(b)(ii)(B) or funding for a business resource center;

(iii) subject to Section **11-41-103**, to pay for, including financing or refinancing, all or part of:

(A) project area development in a project area, including environmental remediation activities occurring before or after adoption of the project area plan;

(B) housing-related expenditures, projects, or programs as described in Section **17C-1-411** or **17C-1-412**;

(C) an incentive or other consideration paid to a participant under a participation agreement;

(D) subject to Subsections (1)(c) and (4), the value of the land for and the cost of the installation and construction of any publicly owned building, facility, structure, landscaping, or other improvement within the project area from which the project area funds are collected; or

(E) the cost of the installation of publicly owned infrastructure and improvements outside the project area from which the project area funds are collected if the board and the community legislative body determine by resolution that the publicly owned infrastructure and improvements benefit the project area;

(iv) in an urban renewal project area that includes some or all of an inactive industrial site and subject to Subsection (1)(e), to reimburse the Department of Transportation created under Section **72-1-201**, or a public transit district created under Title 17B, Chapter 2a, Part 8, Public Transit District Act, for the cost of:

(A) construction of a public road, bridge, or overpass;

(B) relocation of a railroad track within the urban renewal project area; or



491 (C) relocation of a railroad facility within the urban renewal project area;

492 (v) subject to Subsection (5), to transfer funds to a community that created the agency;

493 or

494 (vi) subject to Subsection (1)(f), for agency-wide project development under Part 10,  
495 Agency Taxing Authority.

496 (b) The determination of the board and the community legislative body under  
497 Subsection (1)(a)(iii)(E) regarding benefit to the project area shall be final and conclusive.

498 (c) An agency may not use project area funds received from a taxing entity for the  
499 purposes stated in Subsection (1)(a)(iii)(D) under an urban renewal project area plan, an  
500 economic development project area plan, or a community reinvestment project area plan  
501 without the community legislative body's consent.

502 (d) (i) Subject to Subsection (1)(d)(ii), an agency may loan project area funds from a  
503 project area fund to another project area fund if:

504 (A) the board approves; and

505 (B) the community legislative body approves.

506 (ii) An agency may not loan project area funds under Subsection (1)(d)(i) unless the  
507 projections for agency funds are sufficient to repay the loan amount.

508 (iii) A loan described in Subsection (1)(d) is not subject to Title 10, Chapter 5,  
509 Uniform Fiscal Procedures Act for Utah Towns, Title 10, Chapter 6, Uniform Fiscal  
510 Procedures Act for Utah Cities, Title 17, Chapter 36, Uniform Fiscal Procedures Act for  
511 Counties, or Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts.

512 (e) Before an agency may pay any tax increment or sales tax revenue under Subsection  
513 (1)(a)(iv), the agency shall enter into an interlocal agreement defining the terms of the  
514 reimbursement with:

515 (i) the Department of Transportation; or

516 (ii) a public transit district.

517 (f) Before an agency may use project area funds for agency-wide project development,  
518 as defined in Section 17C-1-1001, the agency shall obtain the consent of the taxing entity  
519 committee or each taxing entity party to an interlocal agreement with the agency.

520 (2) (a) Sales and use tax revenue that an agency receives from a taxing entity is not  
521 subject to the prohibition or limitations of Title 11, Chapter 41, Prohibition on Sales and Use

522 Tax Incentive Payments Act.

523 (b) An agency may use sales and use tax revenue that the agency receives under an  
524 interlocal agreement under Section 17C-4-201 or 17C-5-204 for the uses authorized in the  
525 interlocal agreement.

526 (3) (a) An agency may contract with the community that created the agency or another  
527 public entity to use agency funds to reimburse the cost of items authorized by this title to be  
528 paid by the agency that are paid by the community or other public entity.

529 (b) If land is acquired or the cost of an improvement is paid by another public entity  
530 and the land or improvement is leased to the community, an agency may contract with and  
531 make reimbursement from agency funds to the community.

532 (4) Notwithstanding any other provision of this title, an agency may not use project  
533 area funds, project area incremental revenue as defined in Section 17C-1-1001, or property tax  
534 revenue as defined in Section 17C-1-1001, to construct a local government building unless the  
535 taxing entity committee or each taxing entity party to an interlocal agreement with the agency  
536 consents.

537 (5) For the purpose of offsetting the community's annual local contribution to the  
538 Homeless Shelter Cities Mitigation Restricted Account, the total amount an agency transfers in  
539 a calendar year to a community under Subsections (1)(a)(v), 17C-1-411(1)(d), and  
540 17C-1-412(1)(a)(x) may not exceed the community's annual local contribution as defined in  
541 Section 35A-8-606.

542 Section 8. Section 63N-1a-301 is amended to read:

543 **63N-1a-301. Creation of office -- Responsibilities.**

544 (1) There is created the Governor's Office of Economic Opportunity.

545 (2) The office is:

546 (a) responsible for implementing the statewide economic development strategy  
547 developed by the commission; and

548 (b) the industrial and business promotion authority of the state.

549 (3) The office shall:

550 (a) consistent with the statewide economic development strategy, coordinate and align  
551 into a single effort the activities of the economic opportunity agencies in the field of economic  
552 development;

(b) provide support and direction to economic opportunity agencies in establishing goals, metrics, and activities that align with the statewide economic development strategy;

(c) administer and coordinate state and federal economic development grant programs;

(d) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;

(e) promote and encourage the employment of workers in the state and the purchase of goods and services produced in the state by local businesses;

(f) act to create, develop, attract, and retain business, industry, and commerce in the state[;];

(i) in accordance with the statewide economic development plan and commission directives; and

(ii) subject to the restrictions in Section [11-41-103](#);

(g) act to enhance the state's economy;

(h) act to assist strategic industries that are likely to drive future economic growth;

(i) assist communities in the state in developing economic development capacity and coordination with other communities;

(j) identify areas of education and workforce development in the state that can be improved to support economic and business development;

(k) consistent with direction from the commission, develop core strategic priorities for the office, which may include:

(i) enhancing statewide access to entrepreneurship opportunities and small business support;

(ii) focusing industry recruitment and expansion on strategically chosen clusters of industries;

(iii) ensuring that in awarding competitive economic development incentives the office accurately measures the benefits and costs of the incentives; and

(iv) assisting communities with technical support to aid those communities in improving economic development opportunities;

(l) submit an annual written report as described in Section [63N-1a-306](#); and

(m) perform other duties as provided by the Legislature.

(4) In order to perform its duties under this title, the office may:

(a) enter into a contract or agreement with, or make a grant to, a public or private entity, including a municipality, if the contract or agreement is not in violation of state statute or other applicable law;

(b) except as provided in Subsection (4)(c), receive and expend funds from a public or private source for any lawful purpose that is in the state's best interest; and

(c) solicit and accept a contribution of money, services, or facilities from a public or private donor, but may not use the contribution for publicizing the exclusive interest of the donor.

(5) Money received under Subsection (4)(c) shall be deposited [in] into the General Fund as dedicated credits of the office.

(6) (a) The office shall:

(i) obtain the advice of the GO Utah board before implementing a change to a policy, priority, or objective under which the office operates; and

(ii) provide periodic updates to the commission regarding the office's efforts under Subsections (3)(a) and (b).

(b) Subsection (6)(a)(i) does not apply to the routine administration by the office of money or services related to the assistance, retention, or recruitment of business, industry, or commerce in the state.

Section 9. Section **67-3-1** is amended to read:

**67-3-1. Functions and duties.**

(1) (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

(b) The state auditor is not limited in the selection of personnel or in the determination of the reasonable and necessary expenses of the state auditor's office.

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances;

(b) the revenues received or accrued;

(c) expenditures paid or accrued;

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

615 (e) the cash balances of the funds in the custody of the state treasurer.

616 (3) (a) The state auditor shall:

617 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of  
618 any department of state government or any independent agency or public corporation as the law  
619 requires, as the auditor determines is necessary, or upon request of the governor or the  
620 Legislature;

621 (ii) perform the audits in accordance with generally accepted auditing standards and  
622 other auditing procedures as promulgated by recognized authoritative bodies; and

623 (iii) as the auditor determines is necessary, conduct the audits to determine:

624 (A) honesty and integrity in fiscal affairs;

625 (B) accuracy and reliability of financial statements;

626 (C) effectiveness and adequacy of financial controls; and

627 (D) compliance with the law.

628 (b) If any state entity receives federal funding, the state auditor shall ensure that the  
629 audit is performed in accordance with federal audit requirements.

630 (c) (i) The costs of the federal compliance portion of the audit may be paid from an  
631 appropriation to the state auditor from the General Fund.

632 (ii) If an appropriation is not provided, or if the federal government does not  
633 specifically provide for payment of audit costs, the costs of the federal compliance portions of  
634 the audit shall be allocated on the basis of the percentage that each state entity's federal funding  
635 bears to the total federal funds received by the state.

636 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit  
637 funds passed through the state to local governments and to reflect any reduction in audit time  
638 obtained through the use of internal auditors working under the direction of the state auditor.

639 (4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to  
640 financial audits, and as the auditor determines is necessary, conduct performance and special  
641 purpose audits, examinations, and reviews of any entity that receives public funds, including a  
642 determination of any or all of the following:

643 (i) the honesty and integrity of all the entity's fiscal affairs;

644 (ii) whether the entity's administrators have faithfully complied with legislative intent;

645 (iii) whether the entity's operations have been conducted in an efficient, effective, and

646 cost-efficient manner;

647 (iv) whether the entity's programs have been effective in accomplishing the intended

648 objectives; and

649 (v) whether the entity's management, control, and information systems are adequate,

650 effective, and secure.

651 (b) The auditor may not conduct performance and special purpose audits,

652 examinations, and reviews of any entity that receives public funds if the entity:

653 (i) has an elected auditor; and

654 (ii) has, within the entity's last budget year, had the entity's financial statements or

655 performance formally reviewed by another outside auditor.

656 (5) The state auditor:

657 (a) shall administer any oath or affirmation necessary to the performance of the duties

658 of the auditor's office; and

659 (b) may:

660 (i) subpoena witnesses and documents, whether electronic or otherwise; and

661 (ii) examine into any matter that the auditor considers necessary.

662 (6) The state auditor may require all persons who have had the disposition or

663 management of any property of this state or its political subdivisions to submit statements

664 regarding the property at the time and in the form that the auditor requires.

665 (7) The state auditor shall:

666 (a) except where otherwise provided by law, institute suits in Salt Lake County in

667 relation to the assessment, collection, and payment of revenues against:

668 (i) persons who by any means have become entrusted with public money or property

669 and have failed to pay over or deliver the money or property; and

670 (ii) all debtors of the state;

671 (b) collect and pay into the state treasury all fees received by the state auditor;

672 (c) perform the duties of a member of all boards of which the state auditor is a member

673 by the constitution or laws of the state, and any other duties that are prescribed by the

674 constitution and by law;

675 (d) stop the payment of the salary of any state official or state employee who:

676 (i) refuses to settle accounts or provide required statements about the custody and

disposition of public funds or other state property;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds; or

(iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;

(e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

(f) superintend the contractual auditing of all state accounts;

(g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds;

(h) subject to Subsection (9), withhold the disbursement of tax money from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1; and

(i) withhold state allocated funds or the disbursement of property taxes from a local government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if the state auditor finds the withholding necessary to ensure that the entity registers and maintains the entity's registration with the lieutenant governor, in accordance with Section 67-1a-15.

(8) (a) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(b) If, after receiving notice under Subsection (8)(a), a state or independent local fee-assessing unit that exclusively assesses fees has not made corrections to comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the state auditor:

(i) shall provide a recommended timeline for corrective actions;

(ii) may prohibit the state or local fee-assessing unit from accessing money held by the

708 state; and

709 (iii) may prohibit a state or local fee-assessing unit from accessing money held in an  
710 account of a financial institution by filing an action in district court requesting an order of the  
711 court to prohibit a financial institution from providing the fee-assessing unit access to an  
712 account.

713 (c) The state auditor shall remove a limitation on accessing funds under Subsection  
714 (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and  
715 financial reporting of public funds.

716 (d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with  
717 state law, the state auditor:

718 (i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to  
719 comply;

720 (ii) may prohibit the taxing or fee-assessing unit from accessing money held by the  
721 state; and

722 (iii) may prohibit a taxing or fee-assessing unit from accessing money held in an  
723 account of a financial institution by:

724 (A) contacting the taxing or fee-assessing unit's financial institution and requesting that  
725 the institution prohibit access to the account; or

726 (B) filing an action in district court requesting an order of the court to prohibit a  
727 financial institution from providing the taxing or fee-assessing unit access to an account.

728 (e) If the local taxing or fee-assessing unit adopts a budget in compliance with state  
729 law, the state auditor shall eliminate a limitation on accessing funds described in Subsection  
730 (8)(d).

731 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has  
732 received formal written notice of noncompliance from the auditor and has been given 60 days  
733 to make the specified corrections.

734 (10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state  
735 auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

736 (b) If the state auditor receives a notice of non-registration, the state auditor may  
737 prohibit the local government entity or limited purpose entity, as those terms are defined in  
738 Section 67-1a-15, from accessing:



(i) money held by the state; and

(ii) money held in an account of a financial institution by:

(A) contacting the entity's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the entity access to an account.

(c) The state auditor shall remove the prohibition on accessing funds described in Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in Section 67-1a-15, from the lieutenant governor.

(11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the state auditor:

(a) shall authorize a disbursement by a local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing unit if the disbursement is necessary to:

(i) avoid a major disruption in the operations of the local government entity, limited purpose entity, or state or local taxing or fee-assessing unit; or

(ii) meet debt service obligations; and

(b) may authorize a disbursement by a local government entity, limited purpose entity, or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

(12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take temporary custody of public funds if an action is necessary to protect public funds from being improperly diverted from their intended public purpose.

(b) If the state auditor seeks relief under Subsection (12)(a):

(i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8); and

(ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a court orders the public funds to be protected from improper diversion from their public purpose.

(13) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17,

Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act; and

(b) ensure that those guidelines and procedures provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements, and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

(14) (a) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

(b) If the state auditor receives the notice described in Subsection [11-41-104\(5\)](#) from the Governor's Office of Economic Opportunity, the state auditor may initiate an audit or investigation of the municipality or county subject to the notice to determine compliance with Section [11-41-103](#).

(15) (a) The state auditor may not audit work that the state auditor performed before becoming state auditor.

(b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

(i) designate how that work shall be audited; and

(ii) provide additional funding for those audits, if necessary.

(16) The state auditor shall:

(a) with the assistance, advice, and recommendations of an advisory committee appointed by the state auditor from among local district boards of trustees, officers, and employees and special service district boards, officers, and employees:

(i) prepare a Uniform Accounting Manual for Local Districts that:

(A) prescribes a uniform system of accounting and uniform budgeting and reporting procedures for local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, and special service districts under Title 17D, Chapter 1, Special Service District Act;

(B) conforms with generally accepted accounting principles; and

(C) prescribes reasonable exceptions and modifications for smaller districts to the uniform system of accounting, budgeting, and reporting;

(ii) maintain the manual under this Subsection (16)(a) so that the manual continues to reflect generally accepted accounting principles;

(iii) conduct a continuing review and modification of procedures in order to improve them;

(iv) prepare and supply each district with suitable budget and reporting forms; and

(v) (A) prepare instructional materials, conduct training programs, and render other services considered necessary to assist local districts and special service districts in implementing the uniform accounting, budgeting, and reporting procedures; and

(B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title 63G, Chapter 22, State Training and Certification Requirements; and

(b) continually analyze and evaluate the accounting, budgeting, and reporting practices and experiences of specific local districts and special service districts selected by the state auditor and make the information available to all districts.

(17) (a) The following records in the custody or control of the state auditor are protected records under Title 63G, Chapter 2, Government Records Access and Management Act:

(i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through

other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

(ii) records and audit workpapers to the extent the workpapers would disclose the identity of an individual who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the individual be protected;

(iii) before an audit is completed and the final audit report is released, records or drafts circulated to an individual who is not an employee or head of a governmental entity for the individual's response or information;

(iv) records that would disclose an outline or part of any audit survey plans or audit program; and

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection (17) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the state auditor and the subject of an audit performed by the state auditor as to whether the state auditor may release a record, as defined in Section 63G-2-103, to the public that the state auditor gained access to in the course of the state auditor's audit but which the subject of the audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The state auditor may submit a record dispute to the State Records Committee, created in Section 63G-2-501, for a determination of whether the state auditor may, in conjunction with the state auditor's release of an audit report, release to the public the record that is the subject of the record dispute.

(iii) The state auditor or the subject of the audit may seek judicial review of a State

863 Records Committee determination under Subsection (17)(d)(ii), as provided in Section  
864 63G-2-404.

865 (18) If the state auditor conducts an audit of an entity that the state auditor has  
866 previously audited and finds that the entity has not implemented a recommendation made by  
867 the state auditor in a previous audit, the state auditor shall notify the Legislative Management  
868 Committee through the Legislative Management Committee's audit subcommittee that the  
869 entity has not implemented that recommendation.

870 (19) The state auditor shall, with the advice and consent of the Senate, appoint the state  
871 privacy officer described in Section 67-3-13.

872 (20) The state auditor shall report, or ensure that another government entity reports, on  
873 the financial, operational, and performance metrics for the state system of higher education and  
874 the state system of public education, including metrics in relation to students, programs, and  
875 schools within those systems.